

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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WRIT PETITION No.24391 of 2006

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DATED: 29.12.2006

Between:

1. Mullamuri Srinivasa Rao
2. Thallapaneni Srinivasa Rao
3. Madamanchi Venkata Subbaiah

...
Petitioners

and

The Kandukur Municipality rep.by its
Commissioner, Kandukur town, Prakasam district.

...Respondent

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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WRIT PETITION No.24391 of 2006

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ORDER:

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This Court ordered notice before admission on 24.11.2006 and an order of *status quo* was granted for a limited period, which is being extended.

The Writ Petition is filed by the petitioners for a Writ of Mandamus declaring the action of the respondent in deploying men and machinery and threatening to excavate in their sites covered by survey No.234 and demolish the building therein for the purpose of construction of drain as illegal, irregular, arbitrary, without jurisdiction and violative of the provisions of Andhra Pradesh Municipalities Act

and the Rules framed thereunder and also offends Articles 14, 21 and 300 A of the Constitution of India, and to consequently direct the respondent not to excavate or construct any drain in their site covered by survey No.234 of Kandukur Municipal limits and not to demolish any portion of their building bearing Assessment Nos.1129 and 1396 and pass such suitable orders.

It is stated that the first petitioner and third petitioner are the absolute owners and possessors of 190 sq. yards of site and asbestos sheet shed situated in survey No.234 of Kandukuru Municipality and they purchased the said property under registered sale deed, dated 13.02.2003. It is also stated that the first petitioner and the second petitioner are the absolute owners and possessors of 21 $\frac{2}{3}$ of sq. yards of site situated in same survey number, having purchased the same under registered sale deed dated 07.04.2001. They constructed a terraced building of two floors in the said site as per sanction plan granted by the respondent. To the East of the said properties, there lies Kandukur – Kovur road.

It is also stated that there lies a drain running Western adjacent to Kovur road from North to Southern direction from survey Nos.273 to 272 and further to 271. That drain joins at survey No.271 with main drain called GAJULA KALVA. The said drain and main drain together take turn towards East beneath Kovur road and thereafter proceed Eastern along with Kovur road adjacent to present bus stand and joins the main drain at Northern adjoining of O.V. Road. The said drain flow has been in existence since formation of the roads and times immemorial. The said drains have been serving the purpose of draining out sullage water and rainwater. It is also stated that on 21.11.2006, the respondent deployed machinery and workers at GAJULA KALVA drain with a view to excavate the drain running

through survey Nos.273, 272 and 271 straight into survey No.234. Having noticed the same, the petitioners requested the respondent and his men to stop excavation work as it would run through the petitioners' site and damage their building situated in survey No.234. The respondent-Municipality declared that they had power and authority to dig drain anywhere, and the petitioners requested the respondent not to divert the flow of drain as the existing drain serves the intended purpose to its optimum. The respondent did not heed the words of the petitioners. Thus, the said action is being questioned in the present Writ Petition.

In the counter affidavit, it is stated that the excavation of drain was not started in survey No.234, and only after the Mandal Surveyor conducts survey and gives marking, the work of the construction of the drain will be taken up in the road side. It is also stated that in Kovur Road, there is no drain in front of any house. The said site which the petitioners are claiming will be decided only after the Mandal Surveyor surveys and gives marking. It is also stated that in Kovur Road, there is no drain in front of any house. The sullage water of Western side of Kovur Road has to be routed to main drain at Kanigiri Road. Hence, the present drain is proposed from Boggulasangam to Kanigiri Road from the funds sanctioned by the Government under Rajiv Nagara Bata Programme. At present, the rain water from Komitikunta will flow through Gajulakaluva into Muthyalakunta situated at North East corner of RTC Depot and after it is filled, the water will flow into Gundamkatta. As a result, the ground water in the area will rise and the water level in the surroundings will go up, and borings and open wells will also function well catering the needs of the people. It is also stated that, as pointed out by the petitioners, no excavation work is started in Survey No.234. After the Surveyor gives marking, the drain

construction work will be taken up in the road side only. A letter was addressed to Mandal Revenue Officer, Kandukur, on 22.11.2006 requesting to depute the Mandal Surveyor for the said purpose. The other allegations are specifically denied. Further, specific stand is taken that the petitioners who had seen the demolition of compound wall, site outs and pucca rooms presumed that the Municipality is going to demolish their buildings also with force and approached this Court and obtained interim order. As a matter of fact, the Mandal Surveyor has to give markings of road site in front of the petitioners' houses and then only, the construction work will be taken up in the Government site.

In the light of the respective stands taken by the parties, it is however brought to the notice of this Court that a sketch is placed before this Court and it is stated that the Mandal Surveyor had already conducted the survey and had given some markings. Further, it is also stated that there are certain encroachments of the public road. It is needless to say that this is a disputed question of fact. However, the writ petitioners are asserting their rights on the strength of certain sale deeds. It is needless to say that in the light of the respective stands taken by the parties, the respondent has to further follow the due process of law under Section 192 of the Andhra Pradesh Municipalities Act or under other provisions of the Act and the Rules made thereunder as the case may be.

With the above observations, the Writ Petition is disposed of. No order as to costs.

(P.S.NARAYANA,J)

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